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ALEXANDER L. STEVAS,
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No. 81-2200

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

THE MINERS AND MERCHANTS BANK
OF ROUNDUP, MONTANA,

Petitioner,

vs.

L. D. STENSVAD, personally and as representative of the investing shareholders of AGRI-SERVICES, INC., M-V ENTERPRISES, INC., M & S CATTLE FEEDERS, and L. D. STENSVAD CATTLE CO., all Montana corporations,

Respondent.

ON WRIT OF CERTIORARI FROM
THE SUPREME COURT OF THE STATE OF MONTANA

BRIEF IN OPPOSITION TO CERTIORARI

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1. QUESTION PRESENTED

The question presented is whether the United States Supreme Court should grant Certiorari to review a decision of the Supreme Court of the State of Montana where the State Court's decision did not determine any federal issue, but where the Petition for Certiorari claims that the decision of the State Supreme Court on the substantive issues of Montana law constitutes denial of due process of law as protected by the United States Constitution.

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3. TABLE OF AUTHORITIES

§1257, Title 28, U.S.C.A., cited in brief at pages 1 and 7.

Rule 17 of the Rules of the Supreme Court of the United States, cited in brief at pages 1 and 7.

4. SUMMARY OF ARGUMENT

This case clearly does not meet the criteria for a Grant of Certiorari under §1257, Title 28, USCA. It clearly does not fall within Rule 17 of this Court. During ten years of litigation in the Montana Courts, the Petitioner has raised numerous issues which were heard through numerous trial court proceedings, and two Montana Supreme Court appeals. No federal issue was raised during these many hearings and none was raised on appeal. The Petitioner does not claim the improper disposition of a federal issue. Rather, the Petitioner claims that the Montana Supreme Court's decision itself constitutes a denial of due process.

5. STATEMENT OF FACTS

Respondent summarizes the main facts in this case since they are ignored by the Petitioner.

According to the Findings of the Trial Court, on October 7, 1971, the Petitioner, Miners and Merchants Bank of Roundup, Montana, completely and totally breached a contract to loan money, causing the financial ruin of the Respondents. As part of its breach, the Bank extrajudicially seized and voted the stock of four

corporations owned by the Respondents, thereby obtaining control of the corporations. Later, the Bank suffered judgment to be taken against the corporations it controlled.

At trial and upon appeal, the Montana Courts found a breach of contract and awarded the Plaintiffs (here Respondents) damages.

At no time did the Bank plead any entitlement to interest on these notes if the Court found breach of contract and produced no evidence as to the promissory notes upon which it now claims interest.

6. DECISION OF THE MONTANA SUPREME COURT

The Montana Supreme Court reviewed the trial court's decision that the Petitioner did, on October 7, 1971, unilaterally breach its agreement to finance a large cattle feeding operation and further wrongfully took control of the assets of the Respondents.

In its brief, the Petitioner frequently misstates the nature of the Montana Court's decision.

On Page 27 in Part 8 (a), the Petitioner contends that the Montana Court held that Petitioner was entitled to interest from November 11, 1971, until the spring of

1972, and then arbitrarily denied the Petitioner such interest. This is not true. Having found the Bank's actions wrongful, the Court declines to grant the Bank the opportunity to benefit from its wrong:

> "In view of the fact that the Stensvad property taken by the Bank and sold as collateral for the indebtedness due it, exceeded in value, as we have shown, the amount of the principal indebtedness, it is improper in this case to award interest to the Bank on the note balances to the date of judgment . . . . The Bank is entitled to a setoff of no more than the amount of the principal indebtedness as of the date of the breach found by the District Court". Dec. of Montana Supreme Court, Page A. 130-131 of Pet. Append.

The Petitioner Bank had ample opportunity to present its claim for such interest. The claim was denied because of the Bank's wrongful actions and because the Bank sought double recovery on its legitimate rights.

The Petitioner misleads this Honorable Court when he states that he had been awarded interest "fixing his rights". This never occurred.

Second, Petitioner tries to contend that the Montana Supreme Court found a conversion of real property. This again is simply a falsehood. The Montana Courts awarded damages for a civil wrong — breach of contract. In any event, this issue is clearly not federal in

nature.

Third, Petitioner advances an argument based upon res judicata. This same argument was made at all levels of the proceedings in Montana. It failed because the cases asserted as res judicata were completed when the Petitioner controlled both parties to the cases. Given the facts, the claim of res judicata was clearly frivolous, and was so treated by the Montana Courts.

7. PETITIONER'S CLAIM

Petitioner misconstrues the prior decisions of this Court to argue the novel proposition that an "appeal" on state law issues should be taken by this Court. This argument violates the fundamentals of the State-Federal relationship and ignores the jurisdictional provisions of §1257, Title 28, USCA, and this Court's Rule 17.

Respondent respectfully requests that Certiorari be denied.

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8. APPENDIX

Title 28, §1257, U.S.C.A.

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Consititution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat.

929."

Rule 17, Rules of the Supreme Court of the United States

Considerations Governing Review on Certiorari.

"1. A review on writ of certiorar i is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court

of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari."